

**2013 DRAFTING REQUEST**

**Bill**

Received: **1/23/2013** Received By: **mshovers**  
Wanted: **As time permits** Same as LRB:  
For: **Administration-Budget 6-3420** By/Representing: **Gauger**  
May Contact: Drafter: **mshovers**  
Subject: **Local Gov't - misc** Addl. Drafters:  
Extra Copies: **EVM**

Submit via email: **YES**  
Requester's email:  
Carbon copy (CC) to:

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**Pre Topic:**

DOA:.....Gauger, BB0416 -

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**Topic:**

Conduit revenue bonds commission; WHEDA approval process

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 1/24/2013			_____ _____			
/P1		wjackson 1/29/2013	jfrantze 1/29/2013	_____ _____	mbarman 1/29/2013		Local

FE Sent For:

<END>

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Subject: ~~Econ. Development - housing~~ Addl. Drafters: **fknepp**  
**Local Gov't - misc**

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**Instructions:**

See attached

**Drafting History:**

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/? mshovers

/PI WJ 1/28

ph 1/29

1/PI NES 1/24/13

1/29

FE Sent For:

<END>

## Shovers, Marc

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**From:** Gallagher, Michael  
**Sent:** Wednesday, January 23, 2013 1:12 PM  
**To:** Shovers, Marc; Mueller, Eric  
**Cc:** Knepp, Fern; Hanaman, Cathlene (Cathlene.Hanaman@legis.wisconsin.gov)  
**Subject:** FW: Statutory Language Drafting Request - BB0416  
**Attachments:** PFA Request Jan 15 2013.pdf

Marc and Eric, this looks like it belongs to you. If the draft requires Fern or me to do anything in WHEDA, let us know.

Mike

---

**From:** Hanaman, Cathlene  
**Sent:** Wednesday, January 23, 2013 11:40 AM  
**To:** Gallagher, Michael; Knepp, Fern  
**Subject:** FW: Statutory Language Drafting Request - BB0416

You two, right?

**From:** [Michelle.Gauger@wisconsin.gov](mailto:Michelle.Gauger@wisconsin.gov) [mailto:[Michelle.Gauger@wisconsin.gov](mailto:Michelle.Gauger@wisconsin.gov)]  
**Sent:** Wednesday, January 23, 2013 11:21 AM  
**To:** Hanaman, Cathlene  
**Cc:** Thornton, Scott - DOA; Gauger, Michelle C - DOA; Gauger, Michelle C - DOA  
**Subject:** Statutory Language Drafting Request - BB0416

**Biennial Budget:** 2013-15

**Topic:** Public Finance Authority

**Tracking Code:** BB0416

**SBO Team:** HSI

**SBO Analyst:** Gauger, Michelle C - DOA  
**Phone:** (608) 266-3420  
**E-mail:** [Michelle.Gauger@wisconsin.gov](mailto:Michelle.Gauger@wisconsin.gov)

**Agency Acronym:** WHEDA

**Agency Number:** 490

**Priority:** High

**Intent:**

Amend statutory language related to WHEDA and to a commission authorized under Chapter 66 to issue conduit revenue bonds per the attached memo.

**Attachments:** True

*Please send completed drafts to [statlanguage@wisapps.wi.gov](mailto:statlanguage@wisapps.wi.gov)*

## MEMORANDUM

TO: Wisconsin Legislature

FROM: Public Finance Authority

DATE: January 15, 2013

SUBJECT: Proposed Statutory Amendments

The Public Finance Authority is an entity created under 2009 Wisconsin Act 205 to generate economic activity by engaging in the issuance of federally tax-exempt bonds on behalf of private businesses seeking to expand, construct, rehabilitate or otherwise make capital investments in their facilities in Wisconsin and across the country. The PFA's bond issuances are revenue neutral and the PFA does not derive, direct or indirect, support from Wisconsin taxpayers.

The PFA is designed to help overcome the persistent impediments that eligible, creditworthy borrowers face in accessing low-cost, long-term capital by providing inexpensive, predictable and streamlined access to the tax-exempt bond market. In Wisconsin, the PFA has brought transactions to market that would otherwise have not occurred. Ultimately, these transactions save money for state residents while creating jobs in Wisconsin.

As the PFA enters its third year of operation, it has identified provisions in current state law that if amended will allow the PFA to improve its operations as well as continue on with its activities in the most unencumbered, timely and cost-effective manner as possible. Listed in order of priority, those proposed amendments to state law are:

### #1 ELIMINATION OF WHEDA APPROVAL PROCESS

FFK?

Under current law, the Public Finance Authority (the "PFA") must seek prior written approval from the Wisconsin Housing and Economic Development Authority ("WHEDA") before issuing any bonds on economic development and housing projects on which WHEDA is also authorized to issue. 2011 Wisconsin Act 214 made several modifications to the statutes governing the activities of WHEDA. Specifically, Act 214 expanded the scope of what activities are considered an "economic development project" eligible for WHEDA financing. In doing so, Act 214 inadvertently subjected even more of the activities of the PFA in Wisconsin to review and approval by WHEDA. As a result, an amendment to state law is needed to allow the PFA to continue on with its Wisconsin activities in the most unencumbered, timely and cost-effective manner as possible.

### 2011 Wisconsin Act 214

WHEDA is authorized to issue negotiable bonds and notes to finance economic development activities in Wisconsin, including making economic development loans to finance economic development projects. Historically, WHEDA could only finance a limited scope of economic development projects. Act 214, however, made several changes to state law governing

WHEDA, including modifying the definition of "economic development projects" to incorporate many new activities not previously within the scope of WHEDA's permissible financing activities. See Wis. Stat. § 234.01(4n). Under Act 214 the modified definition of "economic development projects" now includes:

- Financing for land, plant or equipment for *any* type of manufacturing facility are now included as an economic development project while prior law had strictly limited the type of manufacturing;
- commercial real estate activities are now included;
- locational restrictions are eliminated;
- limitations on research and development activities are eliminated;
- requirements for activities to be considered of a "long-term nature" are eliminated; and,
- the activity of "long-term working capital" is now within the definition of economic development project.

In sum, "economic development projects" now includes a wide range of activities that previously were not included as projects that could be financed by WHEDA.

#### **Effect on PFA Projects and Suggested Amendment**

Under Wis. Stat. § 66.0304(11)(e), the PFA "must receive written approval" from WHEDA "before issuing bonds on any economic development projects, as that term is used in s. 234.01(4n), in this state." At the time the PFA was created and this provision was added to state law, the scope of projects captured under this requirement were very limited. But with the statutory change earlier this year in Act 214, the expanded definition now subjects an unintended number of projects by the PFA to a review process by WHEDA that is adding to the time and cost that it takes for a project to be financed.

This prior written approval requirement was also included to avoid any confusion and overlap between the PFA and WHEDA on financing for the same type of projects. By allowing WHEDA expanded issuance authority, it could create jurisdictional questions as to when written approval is required. By not requiring written approval by WHEDA, there will be more competition in the tax-exempt bond marketplace. Such competition will keep costs down and create choices in structuring the financing for these transactions. (A similar review and approval requirement for the PFA with the Wisconsin Health and Educational Facilities Authority was eliminated when that organization's bonding authority was expanded.)

To that end, section 66.0304(11)(e) of the Wisconsin Statutes would be deleted:

~~(e) Before issuing bonds on any economic development project, as that term is used in s. 234.01(4n), in this state, or on any housing project, as defined in s. 234.01(7), in this state, a commission must receive written approval from the Wisconsin Housing and Economic Development Authority.~~

## #2 AUTHORIZE INTERNATIONAL BONDING PARTICIPATION

Working with public institutions in the United States, the PFA has the opportunity to participate in bond financing projects for facilities that will be located outside the United States. State law would be amended to make clear that the PFA may be involved with these international projects.

To that end, section 66.0304(1)(g) of the Wisconsin Statutes would be amended to read:

(g) "Project" means any capital improvement, purchase of receivables, property, assets, commodities, bonds or other revenue streams or related assets, working capital program, or liability or other insurance program, located within or outside of this state. A project may be located outside of the United States or territory of the United States provided that the participant or a borrower, including a co-borrower, of proceeds of bonds issued to finance or refinance the project in whole or part is incorporated and has its principal place of business in the United States or a territory of the United States.

## #3 TECHNICAL AMENDMENTS

In its operations since it was established, the PFA has also identified three technical amendments that would further improve state law:

To make clear that the definition of "bond" includes those bonds purchased by the PFA but not issued by the PFA. Section 66.0304(1)(b) of the Wisconsin Statutes would be amended to read:

(b) "Bond" means any bond, note or other obligation ~~of a commission~~ issued or entered into or acquired under this section, including any refunding bond or certificate of participation or lease-purchase, installment sale, or other financing agreement.

To make clear that the approval required with respect to a project in another state may be given by a state department or agency of the other state or territory. Section 66.0304(1)(f) would be amended to read:

*not done*  
(f) "Political subdivision" means any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or other similar governmental entity in another state or office, department, authority, or agency of any such other state or territory of the United States, including any office, department, authority, or agency of the other state or territory.

To clarify that bonds acquired by the PFA may have been issued by any public entity, not just Wisconsin public entities. Section 66.0304(4)(p) of the Wisconsin Statutes would be amended to read:

*Probably has no legal effect*  
Purchase bonds issued by or on behalf of, or held by, any participant, ~~the~~ a state or a department, authority, or agency of the state, or any political subdivision. Bonds purchased under this paragraph may be held by the commission or sold, in whole or in part, separately or together with other bonds issued by the commission.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1310/P1  
MES:MMO/.....

WJY (RMR)

DOA:.....Gauger, BB0416 - Conduit revenue bonds commission; WHEDA approval process

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**

O-NOTE

do not gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

INSERT ANALYSIS

**LOCAL GOVERNMENT**

certain

Current law authorizes two or more political subdivisions to enter into an agreement to create a commission to issue a type of municipal bonds referred to as conduit bonds. Also under current law, only one commission may be created in the state, and that commission currently exists. The commission was created using the current law procedures for intergovernmental or interstate cooperation agreements. Generally, conduit bonds (bonds) are (bonds) issued by a unit of government under which the proceeds of the bond sale are transferred to a private entity (the borrower), who must be qualified under federal law. The borrower uses the proceeds to finance a project that has a public benefit as authorized under state or federal law. In effect, the unit of government serves as a conduit between the borrower and the bond purchaser. Generally, the borrower pays a lower interest rate on the bond proceeds than it would have paid if it had borrowed the money on the open market because the bonds issued by a unit of government may be exempt from federal or state taxation.

The commission created under current law is a unit of government and a body corporate and politic that is completely separate from the creating political subdivisions and from the state. Political subdivision is defined to mean any city, village, town, or county in this state or any city, village, town, county, district,

authority, agency, commission, or similar governmental entity in another state. A political subdivision that is a party to an agreement is considered to be a member of a commission. Before an agreement may take effect, it must be approved by the attorney general. *must approve it*

Current law grants a commission all of the powers that are necessary or convenient for it to carry out its statutorily authorized purposes. Primarily, a commission is authorized to issue bonds or refunding bonds to finance or refinance a project, including funding a reserve fund or capitalized interest, payment of costs of issuance and other costs related to the financing or refinancing, and to enter into agreements related to the issuance of bonds, including liquidity and credit facilities, remarketing agreements, currency exchange agreements, commodity swap agreements, and other hedge agreements. A project *is defined as any capital improvement, investment or program of investment, purchase of receivables, property, assets, commodities, bonds or other revenue streams or related assets, working capital program, or liability or other insurance program, located within or outside of this state.* *which*

Currently, before *this* the commission may issue any bonds on certain specified economic development or housing projects, the commission must receive written approval from WHEDA. This bill repeals the provision requiring the commission to receive such permission. The bill also makes a number of technical and definitional changes, including changing the definition of "bond" to include a bond acquired by a commission, *or entered into* not just a bond issued by a commission, and clarifying that a project may be located outside of the United States under certain circumstances.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

*Keep*

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 66.0304 (1) (b) of the statutes is amended to read:

2           66.0304 (1) (b) "Bond" means any bond, note, or other obligation of a  
3           ~~commission~~ issued, acquired, or entered into by a commission under this section,  
4           including any refunding bond or certificate of participation or lease-purchase,  
5           installment sale, or other financing agreement.

History: 2009 a. 205; 2011 a. 32, 239.

6           **SECTION 2.** 66.0304 (4) (p) of the statutes is amended to read:

7           66.0304 (4) (p) Purchase bonds issued by or on behalf of, or held by, any  
8           participant, ~~the~~ any state or a department, authority, or agency of the state, or any



1 political subdivision. Bonds purchased under this paragraph may be held by the  
2 commission or sold, in whole or in part, separately or together with other bonds  
3 issued by the commission.

History: 2009 a. 205; 2011 a. 32, 239.

\*\*\*\*NOTE: Your instructions state that this change is needed to make clear that bonds acquired by a commission "may have been issued by any public entity, not just Wisconsin entities." This change may have no legal effect because the current law definition of "political subdivision" in s. 66.0304 (1) (f) already applies to governmental entities in other states. Changing "the state" to "any state" may have some legal effect, but it's likely that another state would act through an agency, commission, or other similar governmental entity that is already covered by current law. Consequently, I really don't think ~~that~~ this paragraph needs to be amended.

\*\*\*\*NOTE: I have not amended the definition of "political subdivision" as requested in your instructions because, as pointed out in the above NOTE, that definition already includes governmental entities in other states.

4 **SECTION 3.** 66.0304 (11) (bm) of the statutes is created to read:

5 66.0304 (11) (bm) A project may be located outside of the United States or  
6 outside a territory of the United States if the borrower, including a co-borrower, of  
7 proceeds of bonds issued to finance or refinance the project in whole or in part is  
8 incorporated and has its principal place of business in the United States or a territory  
9 of the United States. To the extent that this paragraph applies to a borrower, it also  
10 applies to a participant if the participant is a non<sup>in</sup>governmental entity.

\*\*\*\*NOTE: I put this provision in sub. (11) instead of the definition of "project" because it is more of a substantive provision than a definition. It seems like a limitation, though, because the definition of "project" says that it can be located "within or outside of this state." There's currently no limitation as to what "outside this state" means. Is it your intent to limit a project in this way?

\*\*\*\*NOTE: Your pre-drafted language for this provision says "provided the participant or a borrower <sup>ellipsis</sup> is incorporated and has its principal place of business in the US." Because "participant" includes governmental entities, it seems odd for the provision to refer to a governmental entity that has its principal place of business in the US. As drafted, does this paragraph meet your intent?

11 **SECTION 4.** 66.0304 (11) (e) of the statutes is repealed.

12 (END)

D-NOTE

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1310/P1dn  
MES&FFK:.....

Wly

Date

Michelle Gauger:

Please review this draft carefully to ensure that it meets your intent. As discussed in the \*\*\*\*\*NOTES in the bill, some of the proposed definitional changes seem to have no legal effect or are unnecessary because the definition already says very clearly what the instructions state it wants the definition to include.

Also, the instructions refer to s. 66.0304<sup>↑ Stats</sup> as a Public Finance Authority, or PFA. This is very confusing because the statute did not create an authority, nor does it refer to the commission as an authority. The statute merely authorized two or more political subdivisions to create a commission as provided in s. 66.0304<sup>↑ Stats</sup>.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1310/Plins  
MES&FFK.....

INSERT ANALYSIS

Current law authorizes two or more political subdivisions to enter into an agreement to create a commission to issue ~~certain~~ <sup>a type of</sup> municipal bonds referred to as conduit bonds. Generally, conduit bonds (bonds) are issued by a unit of government, under which the proceeds of the bond sale are transferred to a private entity (the borrower) that must be qualified under federal law. The borrower uses the proceeds to finance a project that has a public benefit as authorized under state or federal law. In effect, the unit of government serves as a conduit between the borrower and the bond purchaser. Generally, the borrower pays a lower interest rate on the bond proceeds than it would have paid if it had borrowed the money on the open market because the bonds issued by a unit of government may be exempt from federal or state taxation. <sup>in a transaction</sup>

Also under current law, only one commission may be created in the state; that commission currently exists and was created using the current law procedures for intergovernmental or interstate cooperation agreements. A commission is a unit of government and a body corporate and politic that is separate from the creating political subdivisions and from the state. A political subdivision is any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or similar governmental entity in another state. A political subdivision that is a party to an agreement is considered to be a member of <sup>the</sup> the commission. Before an agreement may take effect, the attorney general must approve it.

Current law grants <sup>the</sup> the commission all of the powers that are necessary or convenient for it to carry out its statutorily authorized purposes. Primarily, <sup>the</sup> the commission may issue bonds or refunding bonds to finance or refinance a project, which is defined as any capital improvement, investment or program of investment, purchase of receivables, property, assets, commodities, bonds or other revenue streams or related assets, working capital program, or liability or other insurance program, located within or outside of this state.

Currently, before <sup>the</sup> the commission may issue any bonds on certain economic development or housing projects, the commission must receive written approval from WHEDA. This bill repeals the provision requiring <sup>the</sup> the commission to receive this permission. The bill also makes technical and definitional changes, including <sup>the</sup> the changing the definition of "bond" to include a bond acquired by <sup>the</sup> the commission, not just issued or entered into by <sup>the</sup> the commission, and clarifying that a project may be located outside of the United States under certain circumstances.

~~FE-L~~

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1310/P1dn  
MES:wlj:jf

January 29, 2013

Michelle Gauger:

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Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1310/P1

MES:wlj:jf

DOA:.....Gauger, BB0416 – Conduit revenue bonds commission; WHEDA approval process

**FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION**

1 **AN ACT ...; relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

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66.0304 (11) (bm) A project may be located outside of the United States or outside a territory of the United States if the borrower, including a co-borrower, of proceeds of bonds issued to finance or refinance the project in whole or in part is incorporated and has its principal place of business in the United States or a territory of the United States. To the extent that this paragraph applies to a borrower, it also applies to a participant if the participant is a nongovernmental entity.

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**SECTION 4.** 66.0304 (11) (e) of the statutes is repealed.

**(END)**